No. 512

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IN THE

Supreme Court of the United States

JOSEPH A. ADELMAN and JOSEPH W. KENNEALY, individually and as representative of all persons in Dakota County, Minnesota owning land in the Lower Minnesota River Watershed District,

Appellants,

vs.

THE LOWER MINNESOTA RIVER WATERSHED DISTRICT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

JURISDICTIONAL STATEMENT

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IN THE

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Appellants,

vs.

THE LOWER MINNESOTA RIVER WATERSHED DISTRICT,

Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF MINNESOTA

JURISDICTIONAL STATEMENT

Appellants herein appeal from the final judgment of the Minnesota Supreme Court entered on June 1, 1965, reversing an order and judgment of the District Court of Dakota County, Minnesota, First Judicial District, and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion and decision of the District Court of Dakota County, Minnesota, First Judicial District, is not reported. A Copy of the Findings of Fact, Conclusions of Law and Judgment of that Court are attached hereto as Appendix A. The opinion of the Minnesota Supreme Court is reported in 135 N. W. 2d 670.

JURISDICTION

This suit was brought to enjoin the Auditor of Dakota County, Minnesota, the County Commissioners of Dakota County, Minnesota and the Lower Minnesota River Watershed District from taking any further proceedings with respect to the assessments of benefits or collection or payment thereof against property of the plaintiffs in the Lower Minnesota River Watershed District. The complaint of appellants originally filed and served in the District Court of Dakota County, Minnesota alleged that M.S.A. Chapter 112 was in violation of the United States Constitution in that it deprived the appellants of their property without due process of law. The decision of the District Court of Dakota County, Minnesota was rendered on June 24, 1964 and granted appellants the injunctive relief prayed for and decided, among other things, that said M.S.A. Chapter 112 was in violation of the United States Constitution in that it deprived the appellants of their property without due process of law. Appellee herein appealed to the Minnesota Supreme Court and its assignment of error No. 2 assigned as error the finding of the Dakota County District Court that said Watershed Act is unconstitutional under the Fourteenth Amendment of the United States Constitution. The Minnesota Supreme Court, by an opinion filed on May 18, 1965 and a final judgment entered on June 1, 1965, reversed the decision and judgment of the Dakota County District Court and held in favor of the validity of M.S.A. Chapter 112 as against the challenge that it was in violation of the due process clause of the United States Constitution.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, U.S. Code,

§ 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Walker v. City of Hutchinson*, 352 U.S. 112 (1956), 77 S. Ct. 200, 1 L. Ed. 2d 178; *Chesbro v. Los Angeles County Flood Control District*, 306 U.S. 459 (1939), 83 L. Ed. 921, 59 S. Ct. 622.

The judgment and opinion of the State Court does not depend upon characterization of the statute or mere interpretation of the language employed.

The State Legislature itself did not designate the boundaries of either the Watershed District or the area to be assessed, nor did the State Legislature itself specifically declare that any land in a District to be created would be specially benefited. The Lower Minnesota River Watershed District was created by order of the Water Resources Board of the State of Minnesota pursuant to a petition filed by the Board of County Commissioners of the counties in which land of the proposed District was located. The area within the District to be assessed was determined by the Board of Managers of the District.

We do not question the power of tthe State Legislature to create the usual type of watershed or drainage districts for the customary conservation, drainage and reclamation purposes and to levy taxes and special assessments to pay the cost thereof if proper constitutional safeguards are provided. However, under the facts of the instant case, we do earnestly contest the power of the Minnesota State Legislature to permit the Lower Minnesota River Watershed District to levy special assessments against land which both abuts and does not abut on a navigable river for the benefit of commercial navigation when Congress, which has the paramount power over navigable waters, has not authorized such assessments

and when the Watershed District does not have the exclusive power, if any power, to permit abutting or non-abutting land owners to install docks and similar facilities in order to use the river which is sought to be improved.

QUESTIONS PRESENTED

1. Whether Minnesota Statutes Annotated (M.S.A.) Chapter 112, Statutes of Minnesota, is repugnant to the due process clause of the Fourteenth Amendment to the United States Constitution insofar as it permits a Watershed District created pursuant to said Act to levy special assessments against land abutting and not abutting on a navigable river for the sole and only purpose of improving the navigability of the river when said Watershed District has not been authorized by Congress to levy such assessment and when said District has no exclusive authority to permit the use of the river or land abutting on the river for navigation purposes.

2. Whether the aforesaid statute is so arbitrary and unreasonable as to be repugnant to the due process clause of the Fourteenth Amendment to the United States Constitution when construed and applied to permit a Watershed District to levy special assessments against certain land owners abutting and not abutting on a navigable river to pay for a project the sole purpose of which is to improve the navigability of a river, and said District wholly fails to levy special assessments against other land owners similarly situated contrary to the express provisions of the aforesaid statute.

3. Any other denial of Federal right whether or not capable in itself of being brought here by appeal.

STATUTES AND U. S. CONSTITUTIONAL PROVISIONS INVOLVED

Minnesota Statutes Annotated, Chapter 112 (and M.S.A. Chapter 106 incorporated in said Chapter 112 by reference).

Rivers and Harbors Act of 1958, Public Law 85-500 (This is an appropriation act only and is not set out in full; 33 U.S.C.A. Section 701c is the general law relating to the furnishing of part of the cost of a river improvement by a State or local agency and is set out verbatim as Appendix B).

33 U.S.C.A. Section 701c—Appendix B.

33 U.S.C.A. Section 403—Appendix C.

U.S. Constitution—Amendment 14 Section 1.

M.S.A. Chapter 112 is lengthy and we feel it would serve no useful purpose to set forth the entire statute verbatim since appellants' first contention is that said statute unconstitutionally authorizes and permits a Watershed District to levy special assessments against both abutting and non-abutting land to pay for a project the sole purpose of which is to improve navigation on a navigable river.

M.S.A. 112.36, Subdivision 2, provides in part as follows:

"* * * A Watershed District may be established for any or all of the following conservation purposes: * * * (2) improvement of stream channels for drainage, *navigation,* and any other public purpose; * * *" (Italics supplied)

The remainder of the statute relates primarily to the procedure for creating a district, establishing an overall plan and a project and the procedure for levying special assessments which are not directly involved in this case.

Likewise, setting out the statute verbatim is unnecessary with respect to appellants' second contention which relates to the arbitrary and unreasonable failure of the Watershed District to levy special assessments against certain lands which should have been assessed if the District had constitutional authority to assess appellant's lands. The section of the law applicable to this contention are as follows:

M.S.A. 112.501

"Benefited property, determination

"Subdivision 1. The appraisers shall classify the lands found to be benefited. Where the proposed improvement includes or prays for the construction or improvement of any ditch, stream, river, or watercourse, or any structures for the control or alleviation of damages from flood waters, the appraisers shall be governed by Minnesota Statutes, Section 106.151.

"Subd. 2. In all proceedings under this act assessments for benefits against lands or corporations shall be made upon benefits to such lands or corporations by reason of the project or improvement affecting the same. Benefited properties shall include:

(1) All lands or corporations, *including lands owned by the State of Minnesota or any subdivision thereof receiving direct benefits such as drainage,* commercial navigation, disposal of sewage or waste material, protection from overflow by flood control improvements, prevention of siltation, control of erosion, or maintenance of lake levels; * * *" (italics supplied)

106.151 Viewers, duties (incorporated in M.S.A. 112 by reference)

"The viewers, with or without the engineer, shall determine the benefits or damages to all lands and proper-

ties affected by the proposed drainage system and shall make their report thereon.

"* * *

"Benefits and damages shall be reported on all lands owned by the state the same as upon taxable lands. (italics supplied)

"The viewers shall report all benefits and damages that will result to all railways and other utilities, including lands and property used for railway or other utility purposes. (italics supplied)

"They shall report the benefits and damages resulting to the State of Minnesota and all counties and other municipal corporations resulting from the proposed drainage system. * * *" (italics supplied)

33 U.S.C.A. Section 701c which authorized the Corps of Engineers to improve the channel of the Minnesota River from Mile Zero to Mile 14 on condition that *some* state or local agency contribute a portion of the cost, but did not authorize the levy of special assessments or authorize abutting land owners in advance to make use of the improvement, is contained in Appendix B. The Act of Congress which prohibits an obstruction to a navigable river and makes it unlawful to build any wharf, pier, or other structure on any navigable river except with the consent of the Chief of Engineers and the Secretary of the Army is contained in Appendix C (Title 33 U.S.C. Section 403).

STATEMENT

Appellants Joseph A. Adelman and Joseph W. Kennealy are the owners of several parcels of land, some of which abut on and some of which do not immediately abut upon the south bank of the Minnesota River within fourteen miles of its mouth where it enters the Mississippi River at St. Paul, Minnesota. The record in this case showed that of 6411 acres assessed for this project, less than 1/3 thereof were abutting on the portion of the river to be improved. The Minnesota River is navigable. The two named appellants originally commenced this action on behalf of themselves and other land owners similarly situated to enjoin the collection of special assessments levied against their land by the Lower Minnesota River Watershed District to pay for said District's portion of the cost of improving the navigability of the Minnesota River from Mile Zero to Mile 14. The Lower Minnesota River Watershed District was created pursuant to Chapter 112 Minnesota Statutes Annotated entitled "Minnesota Watershed Act", originally passed in 1955. As originally adopted the purpose of the Act was to control flood waters, improve drainage, reclaiming wet lands, regulating flow of streams, conserving waters, prevent soil erosion and similar conservation purposes. By an amendment adopted in 1957 the Minnesota Legislature added the word "navigation" as one of the purposes of the Minnesota Watershed Act (1957 Minnesota Session Laws, Ch. 799).

In 1958, for the sole purpose of aiding navigation, the United States Congress adopted the Rivers and Harbors Act of 1958, Public Law 85-500, which authorized the Corps of Army Engineers to improve the navigability of the Minnesota River from Mile Zero to Mile 14. 33 U.S.C.A. Section

701c provides that such improvements shall be made on condition that *some* local governmental agency furnish certain easements and rights of way. The evidence in the case is uncontradicted that the project would have *no effect on flood control.* Neither would it affect reclamation of wet lands or any other matter whatsoever except the improvement of the Minnesota River for commercial navigation. The record was uncontradicted that the U. S. Congress and Corps of Engineers authorized the improvement primarily because there would be minimum savings of $400,000 (R. p. 322—Plaintiff's Exhibit 28 (p. 3) *annually* to existing industrial and commercial users of the river. None of appellants are included in this category and the land of appellants which does not abut on the river could not conceivably benefit. In addition, one of appellee's own witnesses estimated that one existing user of the river saves $750,000 annually by presently maintaining a 9 foot channel in this river at private expense. (R. p. 324, f. 2, 3)

The Board of Managers of the Lower Minnesota River Watershed District, by resolution, without prior notice to any land owners in the District, decided to furnish the easements and rights of way referred to in 33 U.S.C.A. Section 701c. Said Watershed District is a public corporation with limited powers relating to the conservation of waters and with none of the customary powers of municipal corporations.

The land of the appellants is located within the State of Minnesota, the County of Dakota, the Township of Eagan, and a school district, all of which public bodies have separate taxing powers in addition to whatever taxing powers may be lawfully granted to said Watershed District. The easements and rights of way which the Watershed District agreed to

furnish were an integral part of the proposed channel improvement for navigation purposes only. Prior to the commencement of this action and the preparation of the plans for the proposed improvement certain industries located on the Minnesota River below said Mile 14, to-wit: Northern States Power Company, Cargill, Inc. and several smaller industries, maintained a nine foot channel in said stretch of the Minnesota River at their own expense and primarily for their own purpose. The proposed improvement would merely eliminate several bends in the river and result in a wider and more uniform channel width for fourteen miles.

The Board of Managers of the Watershed District undertook to levy special assessments against land abutting and not abutting on the fourteen mile stretch of river to be improved for alleged special benefits to said land because of the improvement. The appellant Adelman was assessed approximately $20,000.00. Appellant Adelman was the owner of 477 acres, approximately 290 acres of which was in the assessment area. About half of said 290 acres was subject to flooding in normal high water and exceptionally high water covered all of it. Of six separate parcels assessed against Adelman, only two of them abutted on the Minnesota River. Named appellant Kennealy was the owner of 31.88 acres in the Assessment area, none of which abutted upon the Minnesota River, and for which he was assessed approximately $1,600.00. Other persons similarly situated were assessed varying amounts making a total of over $400,000.00 in assessments.

HOW THE FEDERAL QUESTION IS PRESENTED

The complaint and amended complaint of appellants originally filed and served in the District Court of Dakota County, Minnesota alleged (record in Minnesota Supreme Court, p. 2, f. 1 and p. 17, f. 2) "that said M.S.A. 112.34-112.85 is unconstitutional and void and would deprive plaintiffs of their property without due process of law contrary to the Fourteenth Amendment, Section 1 of the Constitution of the United States of America. * * *" The decision of the District Court of Dakota County, Minnesota was made on June 24, 1964, and granted appellants the injunctive relief prayed for and decided, among other things, that (record Minnesota Supreme Court, p. 463, f. 1) "* * * said M.S.A. 112.34-112.85 is unconstitutional and void and would deprive plaintiffs of their property without due process of law contrary to the Fourteenth Amendment, Section 1 of the Constitution of the United States of America. * * *" Appellee duly appealed to the Minnesota Supreme Court and its assignment of error #2 assigned as error the finding of the Dakota County District Court that said M.S.A. Chapter 112-34-112.85 is unconstitutional as follows (appellee's brief in Minnesota Supreme Court, p. 30): "The trial court erred in finding that the Watershed Act is unconstitutional under the Fourteenth Amendment of the United States Constitution. * * *" The Minnesota Supreme Court, by an opinion filed on May 18, 1965, and a final judgment entered on June 1, 1965, reversed the decision and judgment of the Dakota County District Court and held in favor of the validity of M.S.A. Chapter 112 as against the challenge that it was in violation of the due process clause of the United States Constitution.

The Trial Court found as a fact "that said Board of Managers of said Lower Minnesota River Watershed District have attempted to assess special benefits against land which receives only general benefits and no special benefits", and "that M.S.A. 112 is unconstitutional and void and would deprive plaintiffs of their property without due process of law contrary to the Fourteenth Amendment, Section 1 of the Constitution of the United States of America". That finding of the Trial Court was based on the overwhelming weight of the evidence in the case which was virtually uncontradicted. The Minnesota Supreme Court in its opinion did not attempt to disagree with the finding of fact as to general benefit, but did disagree with the trial court on its holding that the law was unconstitutional. M.S.A. Chapter 112 and M.S.A. Chapter 106 incorporated therein by reference, specifically require that railroads and the State of Minnesota should be assessed along with other private land owners if such railroads or the State owned lands within the assessment district. The evidence in the case was uncontroverted that the State of Minnesota and at least one railroad in the assessment district would receive substantial benefits in the same manner that the Watershed District claims that appellants' land would be specially benefited. R. p. 331-332 (Plaintiffs' Exhibit 2—Contract) However, neither said railroad nor the State of Minnesota was assessed for these alleged benefits, which they clearly should have been if the District is held to be constitutionally authorized to levy assessments therefor. R. p. 41-43

It is thus contended that by construing and applying the statute in question to permit the Watershed District to fail to make said assessments against a railroad right of way and the State of Minnesota is so arbitrary and unreasonable that it amounts to the taking of appellants' property without due process of law.

THE QUESTIONS ARE SUBSTANTIAL

To the best of appellants' knowledge the precise questions raised by this appeal have not been decided by this Court or any Federal Court.

The issues raised by this appeal are of the utmost importance to all owners of land abutting and not abutting on all navigable rivers. It is important for such owners or prospective owners on all navigable waterways to know whether their land can be subjected to confiscatory assessments by a state agency without authority of Congress, for an improvement which only benefits the general public and the users of the river for commercial navigation.

These issues are likewise of importance to Watershed or Drainage Districts or other public corporations located on navigable rivers, to know what kind of taxes may be levied for similar improvements.

Inherent in appellants' contention is the fact that a proposed improvement, the sole and only purpose of which is to improve the navigability of a river for commercial purposes, can result in no special benefits to abutting land owners and in no event can any special benefits result to non-abutting land owners; that a state or state agency does not have the power to levy such special assessments in any event even against abutting owners, not only because the alleged benefits resulting therefrom are general only, but also because Congress has paramount, if not exclusive control over navigable rivers and Congress only can regulate the use thereof and permit the enjoyment of the improvement. It is inconceivable that a state agency can levy special assessments for a project when it does not have the sole and exclusive right to permit the use of such improvement (except as to the

rights of the general public) as a typical municipal corporation does in the case of sewer, water, streets, etc.

Thus, we have a situation where non-abutting land owners are assessed substantial assessments for an improvement which they cannot possibly use under any circumstances (except to the same extent that the general public can use it). The abutting land owners who were assessed likewise cannot install docks or similar facilities on their abutting land without the permission of the U. S. Corps of Engineers. There is no assurance that such permission can be obtained. *Thus, even the abutting land owners are assessed for a project which the assessing authority does not have full control over as to use.* See *U. S. v. Republic Steel Corp.*, 362 U.S. 482, 4 L. Ed. 2d 903, 80 S. Ct. 884; *U. S. v. Grand River Dam Authority*, 4 L. Ed. 1186, 363 U.S. 229, 80 S. Ct. 1134.[1]

The instant case is clearly distinguished from and not in the same category as some State Court holdings where special assessments have been permitted for flood control, reclamation, wharfs etc. which obviously directly and immediately benefit abutting land. See *People ex rel Chapman v. Sacramento Drainage District*, 155 Cal. 373, 103 Pac. 207 (1919). See *Lloyd v. City of Redondo Beach*, 12 Pac. 2d 1089. Illustrative of this distinction is the case of *Chicago v. Law*, 144 Ill. 569, 33 N.E. 855, which squarely supports the contention of the appellant and which was wholly ignored by the Minnesota Supreme Court in its decision. The instant decision of

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[1]In the instant case the Watershed District was created without a petition of the land owners affected; the project in question was undertaken without mailed notice to the land owners affected; the final assessments were made on mailed and published notice. Several land owners testified they, in fact, received no notice (other than constructive published notice) of any of the proceedings, including the final assessment.

the Minnesota Supreme Court is thus in conflict with decisions of the highest Court of at least one other state on this important Federal question. See also *Myles Salt Co. v. Board of Commissioners*, 239 U.S. 478 (1916) 60 L. Ed. 392.

Even if M.S.A. Chapter 112 Is Valid, the Assessments Against Plaintiffs' Land Are in Violation of the Due Process Clause of the Federal Constitution Because the Action of the Watershed District in Levying Said Assessments Is Arbitrary and Unreasonable

M.S.A. Chapter 112 and M.S.A. Chapter 106 incorporated therein by reference, specifically require that railroads and the State of Minnesota should be assessed along with other private land owners if such railroads or the State owned land within the assessment district. The evidence in the case was uncontroverted that the State of Minnesota and at least one railroad in the assessment district would receive substantial benefits in the same manner that the Watershed District claims that appellants' land would be specially benefited. However, neither said railroad nor the State of Minnesota were assessed for these alleged benefits which they clearly should have been if the District is held to be constitutionally authorized to levy assessments therefor.

It is thus contended that construing and applying the statute in question to permit the Watershed District to fail to make said assessments against a railroad right of way and the State of Minnesota is too abritrary and unreasonable that it amounts to the taking of appellants' property without due process of law.

This Court in previous decisions has not hesitated to strike down illegal assessments in the *Myles Salt Co.* case, 239 U. S. 478 (1916), and to authorize injunctive relief for an unauthorized assessment. See *Risty v. Chicago, R. I. & Pac. R.R. Co.*, 270 U.S. 378, 70 L. Ed. 642 (1926). Likewise, in the instant case this Watershed District should not be permitted to ride roughshod over the property rights of the appellants by attempting to levy confiscatory assessments for special benefits when there can be none; and, if authorized to do so, to arbitrarily fail to assess benefits against other land owners who, under appellee's theory, admittedly receive benefits similar to those *claimed* to be conferred upon appellants.

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APPENDIX A

State of Minnesota — District Court
County of Dakota — First Judicial District

JOSEPH A. ADELMAN and JOSEPH W. KENNEALY, individually and as representatives of all persons in Dakota County, Minnesota owning land in the Lower Minnesota River Watershed District,

Plaintiffs,

vs.

CARL ONISCHUK, Dakota County Auditor; Dakota County Commissioners HENRY GACKSTETTER, LOUIS WACHTLER, JEROME AKIN, RAY DRISCOLL and JOHN SPERL, and the Lower Minnesota River Watershed District,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

The above entitled action came on for trial on the 29th day of April, 1964 before the Court, the Honorable Robert J. Breunig presiding, without a jury; Vance B. Grannis, Sr. and Vance B. Grannis, Jr. of Grannis & Grannis, South St. Paul, Minnesota appearing for the plaintiffs, except plaintiffs Myrtle G. Pahl and E. R. Amell; Thomas Ticen of Kempf and Ticen, Bloomington, Minnesota appearing for the plaintiffs Myrtle G. Pahl and E. R. Amell; Raymond A. Haik and Robert A. Minish of Erickson, Popham, Haik & Schnobrich, Minneapolis, Minnesota appearing for the defendant Lower

Minnesota River Watershed District; and Jerome J. Kluck, Dakota County Attorney, Hastings, Minnesota appearing for defendants Carl Onischuk, Auditor of Dakota County, and Louis Wachtler, Henry Gackstetter, Jerome Akin, Ray Driscoll and John Sperl, all members of the Board of Dakota County Commissioners; and the Court having duly heard and considered all of the evidence adduced at said trial or agreed to be considered, and the arguments and briefs of counsel, and being fully advised in the premises, makes the following:

FINDINGS OF FACT

I

That the plaintiffs are the owners of lands in Dakota County, Minnesota included in the purported Lower Minnesota River Watershed District.

II

That there are many persons in Dakota County, Minnesota who own land in the purported Lower Minnesota River Watershed District and said persons are too numerous so as to make it impracticable to bring them all before the court. That plaintiffs fairly represent all of said persons and bring this action on behalf of themselves and all other persons similarly situated.

III

That the defendant Carl Onischuk is the duly elected, qualified and acting Auditor of Dakota County, Minnesota. That defendants Louis Wachtler, Henry Gackstetter, Jerome Akin, Ray Driscoll and John Sperl were the duly elected, qualified and acting Commissioners of Dakota County, Minnesota at

all times herein mentioned. That the Lower Minnesota River Watershed District is a District purportedly organized pursuant to the provisions of M.S.A. 112.34-112.85.

IV

That the Lower Minnesota River Watershed District was first created pursuant to the provisions of M.S.A. 112 on or about July 17, 1956 and thereafter the organization of the District was commenced. That subsequent thereto and on or about the 19th day of November, 1957 the order of the Minnesota Water Resources Board establishing said District was vacated, set aside, nullified and held to be of no legal effect by an order of the District Court of Hennepin County, reference to which is hereby made.

V

That subsequent to November 19, 1957 the Minnesota Water Resources Board purportedly attempted to again establish and create the defendant Lower Minnesota River Watershed District pursuant to M.S.A. 112.

VI

That on August 22, 1962 the Board of Managers of the Lower Minnesota River Watershed District purported to adopt a resolution pursuant to M.S.A. 112.67-112.69 establishing a project for the improvement of the channel of the Minnesota River from Mile Zero to Mile 14.7. That said resolution also purported to be in accordance with or pursuant to the River and Harbor Act of the United States Congress of July 3, 1958 (Public Law 85-500; U.S.C.A. 33-633). That at no time did the Board of Managers of the Lower Minnesota River Watershed District, on behalf of said District, enter into a contract with the State of Minnesota or any depart-

ment thereof or the United States of America or any department thereof. That said resolution of August 22, 1962 was, therefore, not authorized by said M.S.A. 112.67-112.69 and was void and of no effect. That no petition was ever filed with the defendant Lower Minnesota River Watershed District by the affected property owners or County Board requesting the establishment of said project for the improvement of the Minnesota River channel. That in the event the defendant Lower Minnesota River Watershed District had the power to enter into a contract with the United States of America or any department thereof in connection with the improvement of the Minnesota River channel as proposed, the United States of America required that such a contract provide that said Watershed District should be obligated to:

a. Provide without cost to the United States all lands, easements, and rights of way necessary for the construction of the project and for subsequent maintenance when and as required.
b. Hold and save the United States free from damages due to the construction works.
c. Make necessary changes in roads.

That the Lower Minnesota River Watershed District does not have the power pursuant to the provisions of M.S.A. 112 to do any of the aforementioned acts or things.

VII

That on or about the 24th day of October, 1962 the Board of Managers of the Lower Minnesota River Watershed District purported to appoint appraisers in accordance with M.S.A. 112.69 to determine benefits and damages. That one of said appraisers was engaged exclusively in the building of homes, the second appraiser was engaged exclusively in community planning and development and the third was

engaged in banking. The said appraiser engaged exclusively as a community planner and developer testified that he did not feel he was qualified for this work and so advised the Board of Managers but his services were, nevertheless, retained. That said appraisers adopted an arbitrary formula for the purported benefits to land adjacent to and near the Minnesota River channel without regard to improvements on said property claimed to be benefited. The only evidence of the District adduced at the trial implementing the report of appraisers was the testimony of a witness indicating that benefits to the affected landowners would be speculative. Two expert witnesses for the plaintiffs testified that the affected plaintiffs would not be specially benefited at all. That the acts of said Lower Minnesota River Watershed District in appointing said appraisers and in confirming and ratifying the report of the appraisers is arbitrary, here capricious, unreasonable and unlawful.

VIII

That subsequent to the 10th day of September, 1963 the Board of Managers of the defendant Lower Minnesota River Watershed District purported to give notice of special assessments of purported benefits to said land within said Watershed District. That notice of said assessments as well as notices of prior hearings and proceedings in connection with the establishment and activities of said District were not given to all owners of land within said District affected by said assessments or proceedings.

IX

That the resolution of the Lower Minnesota River Watershed District dated August 22, 1962 establishing a project

for the improvement of the Minnesota River from Mile Zero to Mile 14.7 and all acts and proceedings of said District subsequent thereto are arbitrary, unreasonable, capricious, unlawful and an abusive power in that:

a. Said Watershed District at no time entered into any contract with the State of Minnesota or any department thereof or the United States of America or any department thereof at or prior to or subsequent to the adoption of said resolution.
b. Said resolution of August 22, 1962 was adopted without any petition by affected landowners or County Board therefor having been filed with said Board.
c. That said Board of Managers of said Lower Minnesota River Watershed District have attempted to assess special benefits against land which receives only general benefits and no special benefits.
d. That said proposed improvement was, in fact, created for the purpose of benefiting certain private industries and not for any purpose authorized by said chapter M.S.A. 112. That no conservation purpose or flood control will be accomplished by said proposed improvement to the Minnesota River channel.

X

That none of the land located within the Lower Minnesota River Watershed District would receive any special benefits by reason of the improvement of the Minnesota River channel as proposed by the resolution of the Board of Managers of said District adopted on August 22, 1962 and all of the land within said District as well as land located without said District, would receive general benefits by reason of said proposed project for the improvement of the Minnesota River channel. By reason thereof said M.S.A. 112.34-112.85 is unconstitutional and void and would deprive plaintiffs of their property without due process of law contrary to the Four-

teenth Amendment, Section 1 of the Constitution of the United States of America and Article I, Section 7 and Section 13 of the Constitution of the State of Minnesota.

IX

That said M.S.A. 112.34-112.85 is unconstitutional and void and is in violation of the Constitution of the State of Minnesota, Article IV, Section 27, because said law and the amendments thereto embrace more than one subject and attempt to legislate by reference to other laws.

XII

That said M.S.A. 112.34-112.85 is unconstitutional and void insofar as it attempts to provide for the assessment of benefits to plaintiffs' property without regard to cash valuation and is contrary to the Constitution of the State of Minnesota, Article IX, Section 1.

XIII

That said M.S.A. 112.34-112.85 is so vague, ambiguous, discriminatory and inconsistent that it is incapable of any reasonable interpretation or enforcement.

XIV

That plaintiffs have no adequate remedy at law and have suffered and will suffer irreparable injury unless the defendants are restrained as prayed for in the complaint.

CONCLUSIONS OF LAW

I

That the resolution of the Lower Minnesota River Watershed District, dated August 22, 1962, purporting to establish

a project for the improvement of the Minnesota River from Mile Zero to Mile 14.7 should be and it is hereby vacated, set aside and nullified and held to be of no legal effect.

II

That the Lower Minnesota River Watershed District has no legal existence and is without the power and right to exercise any of the functions purported to have been conferred upon it by the order of the Minnesota Water Resources Board of March 23, 1960.

III

That the plaintiffs are entitled to a permanent injunction permanently enjoining and restraining the defendants, and each of them, their agents, servants and employees, from doing any act or thing in connection with the levy, collection or enforcement of any special assessments for purported special benefits to any land in Dakota County, Minnesota within the Lower Minnesota River Watershed District; from transferring any funds to the treasurer of the Lower Minnesota River Watershed District which are now on hand or will be hereafter received from the sale of bonds, assessments or otherwise in accordance with the provisions of M.S.A. 112.60, subdivision 3.

From taking any further proceedings with respect to the improvement of the Lower Minnesota River Watershed District.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated at Hastings, Minnesota this 24th day of June, 1964.

ROBERT J. BREUNIG
Judge of the District Court

Stay of 30 days is entered.

APPENDIX B

§ 701c. Rights-of-way, easements, etc.; acquisition by local authorities; maintenance and operation; protection of United States from liability for damages; requisites to run-off and water-flow retardation and soil erosion prevention assistance.

After June 22, 1936, no money appropriated under authority of section 701f of this title shall be expended on the construction of any project until States, political subdivisions thereof, or other responsible local agencies have given assurances satisfactory to the Secretary of the Army that they will (a) provide without cost to the United States all lands, easements, and rights-of-way necessary for the construction of the project, except as otherwise provided herein; (b) hold and save the United States free from damages due to the construction works; (c) maintain and operate all the works after completion in accordance with regulations prescribed by the Secretary of the Army: *Provided,* That the construction of any dam authorized by section 5 of the Act of June 22, 1936, c. 688, 49 Stat. 1572, may be undertaken without delay when the dam site has been acquired and the assurances prescribed herein have been furnished, without awaiting the acquisition of the easements and rights-of-way required for the reservoir area: *And provided further,* That whenever expenditures for lands, easements, and rights-of-way by States, political subdivisions thereof, or responsible local agencies for any individual project or useful part thereof shall have exceeded the present estimated construction cost therefor, the local agency concerned may be reimbursed one-half of its

excess expenditures over said estimated construction cost: *And provided further,* That when benefits of any project or useful part thereof accrue to lands and property outside of the State in which said project or part thereof is located, the Secretary of the Army with the consent of the State wherein the same are located may acquire the necessary lands, easements, and rights-of-way for said project or part thereof after he has received from the States, political subdivisions thereof, or responsible local agencies benefited the present estimated cost of said lands, easements, and rights-of-way, less one-half the amount by which the estimated cost of these lands, easements and rights-of-way exceeds the estimated construction cost corresponding thereto: *And provided further,* That the Secretary of the Army shall determine the proportion of the present estimated cost of said lands, easements, and rights-of-way that each State, political subdivision thereof, or responsible local agency should contribute in consideration for the benefits to be received by such agencies: *And provided further,* That whenever not less than 75 per centum of the benefits as estimated by the Secretary of the Army of any project or useful part thereof accrue to lands and property outside of the State in which said project or part thereof is located, provision (c) of this section shall not apply thereto; nothing herein shall impair or abridge the powers now existing in the Department of the Army with respect to navigable streams: *And provided further,* That nothing herein shall be construed to interfere with the completion of any reservoir or flood control work authorized by the Congress and now under way.

APPENDIX C

§ 403. Obstruction of navigable waters generally; wharves; piers, etc.; excavations and filling in

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same. Mar. 3, 1899, c. 425, § 10, 30 Stat. 1151.